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mon carrier, is doing plant service and also transportation service on behalf of the shipper under a proper allowance from the line carrier, will present difficulties so long as a shipper is permitted to furnish facilities of transportation in return for an allowance.¹⁷ As has been pointed out above, in nearly every case where an allowance is thus paid for this haulage, the haulage is really done in behalf of the shipper and not the carrier, and therefore improperly paid. That much laxity has been permitted here in the way of allowances and extra services rendered by the carrier without compensation would appear from *The Industrial Railways Case*, *supra*, at page 226.

NEGOTIATION OF BILLS OF LADING UNDER COMMON LAW AND MERCANTILE THEORIES: NATURE OF INTEREST TRANSFERRED. — Misapprehension of the legal consequences of transferring by indorsement a negotiable bill of lading has been a fruitful source of litigation in mercantile communities. The prevailing view at common law is that a negotiation of the document, like a delivery of the goods, conveys only the interest which the parties intend shall pass.¹ But according to the custom of merchants, the person entitled on the face of the document to delivery of the goods, is likewise indicated as owner. To give this custom legal effect some of our principal commercial states have by statute² or judicial decision³ adopted what may be called the mercantile view of documents of title. The results of most cases decided in accordance with this view may be explained on the theory that any one who comes within the terms of the promise to deliver has title to the goods,⁴ just as on the better theory of promissory notes, anyone who brings himself within the terms of the promise to pay is conceived to be owner of the obligation.⁵ But it seems more accurate to say that title does not pass to a holder who comes within the terms of the promise unless such was the intent. But if the owner of the goods placed the document in circulation, he is estopped by the representation on its face from denying that a *bonâ fide* indorsee for value acquires an indefeasible title.⁶ In

¹⁷ WYMAN, PUBLIC SERVICE CORPORATIONS, § 1359.

¹ The *Carlos F. Roses*, 177 U. S. 655; *Straus v. Wessel*, 30 Oh. St. 211.

² The most important statutes embodying the mercantile view are the SALES ACT (§§ 27-40), which has been passed in Alas., Ariz., Conn., Md., Mass., Mich., N. J., N. Y., Ohio, R. I. and Wis.; the WAREHOUSE RECEIPTS ACT, passed in Alas., Cal., Col., Conn., D. C., Ill., Ia., Kan., La., Md., Mass., Mich., Minn., Mo., Neb., N. J., N. M., N. Y., Ohio, Ore., Pa., Philippine Is., R. I., S. Dak., Tenn., Vt., Wash., W. Va., and Wis., and the BILLS OF LADING ACT, passed in Alas., Conn., Ill., Ia., La., Md., Mass., Mich.; N. J., N. Y., Ohio and Pa. In the latter statute alone is the finder or thief of a document given power to transfer title by indorsement.

³ *Munroe v. Phila. Warehouse Co.*, 75 Fed. 545; *Comm. Bank v. Armsby*, 120 Ga. 74, 47 S. E. 589; and see *Pollard v. Reardon*, 65 Fed. 848, 849.

⁴ This seems to be the principle underlying the following provisions of the BILLS OF LADING ACT: "A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired, if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if, at the time of negotiation, the bill is in such form that it may be negotiated by delivery."

⁵ See *Peacock v. Rhodes*, 2 Doug. 633, 636; and *Collins v. Martin*, 1 Bos. & P. 648, 651.

⁶ *Munroe v. Phila. Warehouse Co.*, *supra*; *Comm. Bank v. Armsby*, *supra*; and see

most cases either explanation is satisfactory, and gives the documents that facility of negotiation which a mercantile community requires.

An owner of goods who transfers a duly indorsed bill of lading to his agent, with no intent to pass title, may under the common-law view assert his title against a *bonâ fide* indorsee of the agent.⁷ This right is cut off under the mercantile view,⁸ either on the ground that the agent acquires title regardless of the intent, or that the principal is estopped to assert his title against the holder. On the common-law view, a bank advancing money on the faith of an indorsed bill of lading would be an absolute owner, a mortgagee, or a pledgee according to the intent of the parties. Though the indorsement to the bank would be evidence of intent to pass title, a borrower who could prove the contrary might reclaim his property from a *bonâ fide* indorsee for value of the bank.⁹ On the other hand, by the mercantile view the indorsee would be protected, and it would be immaterial whether this was because the bank had a title of its own to transfer, or on principles of estoppel.¹⁰

Where a lender-bank gives up the bill of lading so that the borrower may effect some special disposition of the goods, the bank, to protect itself, usually demands in return a "trust receipt" showing that the borrower has not the full title. Under the common-law view these "trust receipts" are unnecessary, except as evidence of the bank's intent. If the bank had a title, there was no intent to transfer it to the borrower, and the bank could defeat the claim of an indorsee for value of the document or a purchaser of the goods from the borrower.¹¹ In case the bank had merely a pledge or an unrecorded mortgage, which would be valid only where combined with possession,¹² it is now clear that intrusting the general owner with possession as agent for a special purpose will not estop the security-holder from asserting his interest against a *bonâ fide* purchaser.¹³ Under the mercantile view, the "trust receipts" are inadmissible even to show the bank's intent, which will not defeat the title of a *bonâ fide* indorsee of the document surrendered,¹⁴ or any other

Pollard v. Reardon, *supra*. Under this theory, a thief or finder of the document cannot transfer a good title by negotiation, because the owner, in the absence of negligence, has done no act to produce the representation of title. Shaw v. Railroad Co., 101 U. S. 557.

⁷ Fuentes v. Montis, L. R. 3 C. P. 268; Stollenwerck v. Thacher, 115 Mass. 224.

⁸ Comm. Bank v. Armsby, *supra*.

⁹ The reasoning of the court in Mirabita v. Imperial Ottoman Bank, 3 Ex. D. 164, would lead to this result. The court argues that the entire property in the goods was in the borrower, and consequently without the help of an estoppel an indorsee of the bank could acquire no interest.

¹⁰ As a matter of fact, it would seem that the bank usually has a security title, its interest being equivalent to that of a mortgagee in possession. Seward v. Miller, 106 Va. 309, 55 S. E. 681; Comm. Bank v. First State B. & T. Co., 153 S. W. 1175 (Tex. Civ. App.); and see Casey v. Cavaroc, 96 U. S. 467, 477.

¹¹ See Baker v. Brown, 214 Mass. 196, 199, 100 N. E. 1025, 1026; Moors v. Bird, 190 Mass. 400, 77 N. E. 643.

¹² In Seward v. Miller, *supra*, the court says: "The bank in such a case stands in the position of a mortgagee in possession, and is not required in order to protect its lien to have the papers recorded."

¹³ Moors v. Wyman, 146 Mass. 60.

¹⁴ Pease v. Gloahac, L. R. 1 P. C. 219; Munroe v. Phila. Warehouse Co., 75 Fed. 545; R. M. Baker Co. v. Brown, 214 Mass. 196, 100 N. E. 1025 (decided under the SALES ACT).

negotiable document which the borrower was authorized to take out in substitution therefor.¹⁵ The bank's only protection would be a notice on the face of the document to rebut the representation of title.¹⁶

In a recent Texas case *non-negotiable* compress receipts, secured by the borrower with proper authority in exchange for *negotiable* bills of lading, surrendered on "trust receipts," were sold to a *bonâ fide* purchaser. The bank was correctly allowed to reclaim the goods. *B. W. McMahan & Co. v. State Bank of Shawnee*, 160 S. W. 403 (Tex. Civ. App.). Since the mercantile view only applies to negotiable documents of title, the compress receipts can have no better standing than the goods themselves. If the goods themselves were sold, the bank's interest would not be cut off, even under the mercantile view, the purpose of which is merely to remove barriers against the free circulation of negotiable documents.¹⁷ The two theories on which the mercantile view is placed do not afford equally satisfactory explanations of this result. If title to the goods was transmitted absolutely to the borrower by the indorsement, there must be an automatic revesting of the bank's interest at the instant when the borrower obtains manual possession of the goods. This cannot be accounted for on legal principles. The logical explanation is that where the bank has represented the borrower as owner on the face of the document, it is estopped from denying the truth of the representation to the damage of one who has given value relying upon it. Mere possession of the goods themselves or of a non-negotiable document does not amount to a representation of title.

RECENT CASES.

ADMIRALTY — TORTS — EFFECT OF STATE STATUTE ABOLISHING RIGHT RECOGNIZED BY MARITIME LAW. — A state statute abolished the common-law liability of employers for injury to employees and substituted therefor a compensation system. The plaintiff, being injured on a vessel within the state, sued in the admiralty court. *Held*, that the statute does not apply to admiralty causes, as any other construction will make it unconstitutional. *The Fred E. Sander*, 208 Fed. 724.

For an editorial note on the constitutionality of state legislation which takes away rights previously recognized in admiralty courts, see this issue of the REVIEW, p. 578.

AGENCY — NATURE AND INCIDENTS OF THE RELATION — AGENT ACTING FOR TWO PRINCIPALS. — An agent of the defendant insurance company issued a policy on property mortgaged to the plaintiff bank for half its value, "the loss, if any, payable to the mortgagee as his interest might appear."

¹⁵ *Blydenstein v. N. Y. S. & T. Co.*, 67 Fed. 469; *N. Y. S. & T. Co. v. Lipman*, 157 N. Y. 551; *semble, In re Dreuil & Co.*, 205 Fed. 568 (since the borrower was not authorized to take out negotiable receipts for the goods, the shipper was not responsible for the representation they contained).

¹⁶ Such a notice was placed on the bills of lading in *Farmers' & M. Nat. Bank v. Logan*, 74 N. Y. 568; *Dows v. Nat. Ex. Bank*, 91 U. S. 618; *Hieskell v. Farmers' Nat. Bank*, 89 Pa. St. 155.

¹⁷ *Century Throwing Co. v. Muller*, 197 Fed. 252; *Moors v. Wyman*, *supra*; and see *Coker v. First Nat. Bank*, 112 Ga. 71, 73; 37 S. E. 122, 123.